

ENTERED

January 09, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DEMARCUS GENE	§	CIVIL ACTION No
HUBERT,	§	4:24-cv-02138
Plaintiff,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
WILLIAMS BROTHERS	§	
CONSTRUCTION CO	§	
INC,	§	
Defendant.	§	

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

Plaintiff Demarcus Gene Hubert, a *pro se* litigant, filed an action alleging Fair Labor Standards Act violations. Dkt 1-1 at 2. Plaintiff alleges that Jose Reyes, an employee of Defendant Williams Brothers Construction Co, Inc, acted toward him in a discriminatory and harassing manner. Id at 1–2. The matter was referred for disposition to Magistrate Judge Yvonne Y. Ho. Dkt 9.

Pending is a Memorandum and Recommendation by Judge Ho dated October 7, 2024. Dkt 23. She recommends that Plaintiff's notice to voluntarily dismiss the case without prejudice be granted pursuant to Rule 41(a)(2). Id at 5. She so recommends despite Defendant's objection to Plaintiff's notice of voluntary dismissal. See Dkts 21 & 22.

The district court reviews *de novo* those conclusions of a magistrate judge to which a party has specifically objected. See FRCP 72(b)(3) & 28 USC § 636(b)(1)(C); see also *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir

1989, *per curiam*). The district court may accept any other portions to which there's no objection if satisfied that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1430 (5th Cir 1996, *en banc*); see also FRCP 72(b) advisory committee note (1983).

De novo review is not invoked by simply urging again arguments contained in the underlying motion. *Edmond v Collins*, 8 F3d 290, 293 n 7 (5th Cir 1993); see also *Smith v Collins*, 964 F2d 483, 485 (5th Cir 1992) (finding no error in failure to consider objections because plaintiff “merely reargue the legal arguments he raised in his original petition”); *Williams v Woodhull Medical & Mental Health Center*, 891 F Supp 2d 301, 310–11 (EDNY 2012) (*de novo* review not warranted for conclusory or general objections or which merely reiterate original arguments).

The Memorandum and Recommendation here clearly details the applicable law, which instructs that Plaintiff's action be granted and this case dismissed without prejudice. It is clear that Plaintiff cannot voluntarily dismiss this case as of right pursuant to Rule 41(a)(1)(B). Dkts 21 at 1–2 & 23 at 2–3. But Plaintiff may seek a court order to dismiss pursuant to Rule 41(a)(2).

A respected treatise on procedure notes that whether to grant a Rule 41(a)(2) dismissal motion is “a matter addressed to the trial court's sound discretion.” Charles A. Wright & Arthur R. Miller, 9 *Federal Practice & Procedure* §2364 (4th ed 2024); see also *Balistreri v Metropolitan Life Insurance Co*, 272 Fed Appx 345 346 (5th Cir 2008). The Memorandum and Recommendation notes that courts have generally followed the traditional principle that dismissal without prejudice should be allowed “unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” Dkt 23 at 3, quoting *Manshack v Southwestern Electric Power Co*, 915 F2d 172, 174 (5th Cir 1990) (citation omitted). It also lists the reasons why Defendant will not be prejudiced in a legally cognizable manner. Dkt 23 at 4–5. Defendant's respectfully

submitted objection offers no rebuttal, while noting its continued objection. Dkt 24 at 2.

The objections by Defendant to the Memorandum and Recommendation of the Magistrate Judge are OVERRULED. Dkt 24.

No clear error otherwise appears upon review and consideration of the Memorandum and Recommendation, the record, and the applicable law.


The Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 23.

The notice by Plaintiff Demarcus Gene Hubert for voluntary dismissal without prejudice is accepted as a motion under Rule 41(a)(2) and is on that basis GRANTED. Dkt 22.

The case is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Signed on January 9, 2025, at Houston, Texas.



Hon. Charles Eskridge
United States District Judge